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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,419	08/29/2001	Timothy Bateman	0100/0134	5102
21395	7590	05/06/2004	EXAMINER	
LOUIS WOO LAW OFFICE OF LOUIS WOO 717 NORTH FAYETTE STREET ALEXANDRIA, VA 22314			MITCHELL, TEENA KAY	
		ART UNIT	PAPER NUMBER	
			3743	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	BATEMAN ET AL.
09/940,419	
Examiner	Art Unit
Teena Mitchell	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02/25/04.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-11 and 13 is/are pending in the application.
4a) Of the above claim(s) 7-9 and 13 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,5,6,10 and 11 is/are rejected.
- 7) Claim(s) 4 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson (4,050,457) in view of Brumfield 3,049,121).

Davidson in a patient ventilation device discloses:

- a flexible, adhesive sheet member (10, 20) adapted to extend across the mouth and nose of a patient;
- an opening through said member (11) in the region of the mouth;

an adhesive surface on the member (23) adapted to seal around the mouth and nose of the patient such that the nose is blocked by said flexible, adhesive sheet member and the mouth opens through said opening enabling ventilation via the mouth

Inasmuch if any, that Davidson may not be readable upon the adhesive surface adapted to seal around the mouth and nose of the patient, resort is had to Brumfield in a mask teaches an adhesive surface (5) adapted to seal around the nose and mouth of

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the patient (Figs. 1 and 2) providing an adhesive strip to enable the mask to be fitted to the face without wrinkling and with a minimum of folding (Col. 1, lines 47-49).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flexible sheet of Davidson to employ any well known adhesive surface doing so would have provided a means to enable the mask to be fitted to the face without wrinkling and with a minimum of folding including the adhesive strip taught by Brumfield.

With respect to claim 3, Davidson discloses wherein the sheet has two laterally extending cheek pads (Figs. 1-3).

Claim Rejections - 35 USC § 103

Claims 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson/Brumfield as applied to claim 1 above and further in view of Karlis (5,476,092).

The difference between Davidson and claim 5 is the tube (22) extends within the patient's mouth and the other end of said tube projects externally.

Karlis in a mask teaches a tube (2) wherein one end extends within the patient's mouth (6) and the other end of said tube projects externally (2) providing a means to keep the teeth of the patient apart and hence the mouth open and may direct air onto the soft palate of the mouth of the patient, also reducing the risk of obstruction of the fluid passage by the tongue of the patient (Col. 2, lines 38-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the opening of Davidson to employ any well known tube

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wherein one end extends within the patient's mouth and the other end projects externally doing so would have provided a means to keep the teeth of the patient apart and hence the mouth open and may direct air onto the soft palate of the mouth of the patient, also reducing the risk of obstruction of the fluid passage by the tongue of the patient including the tube taught by Karlis.

With respect to claim 10, note rejections of claims 1 and 5 above.

With respect to claim 11, Karlis teaches a removable vent tube inserted through said fitting (2, 6).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson/Brumfield in view of Smith (5,666,950).

The difference between Davidson/Brumfield and claim 6 is the adhesive includes a hydrocolloid.

Smith in a stoma filter device teaches a hydrocolloid adhesive providing a composition, which absorbs significant quantities of moisture reducing skin maceration (Col. 5, lines 12-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the adhesive of Davidson/Brumfield to employ any well known hydrocolloid doing so would have provided an adhesive which absorbs significant quantities of moisture reducing skin maceration including the hydrocolloid taught by Smith.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 6 and 10-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show patient ventilation devices; 4,711,237; 3,695,265.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Teena Mitchell
Teena Mitchell
Examiner
Art Unit 3743
May 1, 2004

Henry Bennett
Henry Bennett
Supervisory Patent Examiner
Group 3700